

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

\_\_\_\_\_  
Appeal from the South Carolina  
Worker’s Compensation Commission  
\_\_\_\_\_

WCC File No. 1609593  
Appellate Case No. 2019-000560  
\_\_\_\_\_

**RECEIVED**  
MAR 06 2020  
SC Court of Appeals

Gena Cain Davis, Claimant,.....Appellant,

v.

S.C. Department of Corrections, Employer, and  
State Accident Fund, Carrier,.....Respondents.

\_\_\_\_\_  
**REPLY TO RETURN TO  
MOTION TO STRIKE**  
\_\_\_\_\_

The Respondents, the S.C. Department of Corrections and the State Accident Fund, hereby Reply to the Appellant’s Return to the Respondents Motion to Strike the “Statement of the Facts” section of the Appellant’s Brief pursuant to Rules 208, 210, 211, and 240 of the South Carolina Appellate Court Rules, as follows:

1. The Appellant’s Return argues that her Brief to the Court of Appeals contains a 2 page “Statement of the Facts” that purports to directly quote medical opinions and other documents, refers to alleged witness statement and opinions, and purports to summarize other contested matters that are not part of the Record in this case, “to ensure the Court has a full understanding

of the procedural posture and positions of the parties.” (Appellant’s Return p.2, #4).

2. The Appellant’s Return admits that their 2 page “Statement of the Facts” contains no references to any transcript, exhibit, or other actual evidence in the Record that could possibly “support the salient facts alleged.” Indeed, not even the alleged quotations contained in the “Statement of the Facts” are cited to the Record because no proper source for these quotations exists in the record.
3. The Appellant’s Return suggests that the failure to cite to the Record in their “*Statement of Facts* violates no rule because it is not part of the *Statement of the Case*.” (Appellant’s Return p.2, #5) (emphasis original). Respectfully, the Appellant’s attempt to distinguish between a “Statement of Facts” and a “Statement of the Case” amounts to a distinction without a difference, especially considering that any such statements may only be made “with reference to the record on appeal.” Rule 208(b)(1)(D).
4. Despite purporting to quote directly from and otherwise summarize the records and alleged opinions of a Dr. Gee, a Dr. Byrd, and a Dr. Hunt, and despite the fact that no record from *any* doctor and no transcript of *any* testimony was ever submitted into evidence before the Workers’ Compensation Commission, the Appellant’s Return suggests that these are merely “contested matters” properly included in the “Statement of Facts” under Rule 208(b)(1)(D). However, records and opinions must actually be submitted into evidence for them to be “contested.” The fact that the

- Appellant has made such self-serving declarations in a previous pleading does not transform such declarations into actual evidence, contested or otherwise.
5. More importantly, the “contested” nature of the evidence does not excuse the requirement that “salient facts alleged” must be supported by actual references to evidence the Record in accordance Rule 208(b)(4). A party’s own self-serving declarations are not evidence of salient facts, even when there is no actual evidentiary support in the Record.
  6. Despite Appellant’s argument in her Return, a 2 page “Statement of the Facts,” which purports to directly quote medical opinions, statements, and other documents that have never been submitted into evidence, is not necessary “to ensure the Court has a full understanding of the procedural posture and positions of the parties.” Not only did the Workers’ Compensation Commission not have any such alleged evidence before it, but the Commission was fully capable of determining the relevant issues without reference to these self-serving declarations, as can the Court of Appeals. Indeed, unsourced references to alleged evidence were not even necessary to the Appellant’s own arguments on appeal.

THEREFORE, because the Appellant’s Brief violates the requirements of Rules 208, 210, and 211 of the South Carolina Appellate Court Rules by representing highly prejudicial and unsubstantiated matters that are outside of the Record on Appeal as “facts,” the Respondents respectfully request that the Court of Appeals Strike the “Statement of the Facts” contained in the Appellant’s Brief.

Respectfully submitted,

*Kirsten Leslie Barr* /les  
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Attorneys for Respondents

March 4, 2020

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**PROOF OF SERVICE**

The undersigned hereby certifies that the above-referenced Appellant, Gena Cain Davis, was served with the attached Respondents' Reply to Return to Motion to Strike this 4th day of March, 2020 depositing a copy of the same in the United States Mail, first class postage prepaid, addressed to counsel of record, as follows:

Stephen B. Samuels, Esq.  
1320 Richland Street  
Columbia, SC 29201

March 4, 2020

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TRASK  
HOWELL  
WORKERS' COMPENSATION DEFENSE

Reply to  
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March 4, 2020

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211

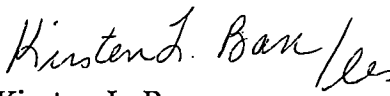
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Re: Gena Cain Davis v. SC Department of Corrections  
W.C.C. File No.: 1609593  
**Appellate Case #: 2019-000560**  
Carrier File No.: 2016-2181  
Date of Accident: July 14, 2016

Dear Ms. Kitchings:

Enclosed herewith for filing, please find the original and six (6) copies of our Reply to Return to Motion to Strike, along with our original Proof of Service of the same, in the above-referenced matter. By a copy of this correspondence, I am serving the other counsel of record with a copy of our Reply.

Yours very truly,

  
Kirsten L. Barr

KLB/cab/les

Enc.

cc: Kori Tabor, South Carolina State Accident Fund (w/enc.) (email only)  
Russell Rush, SC Dept. of Corrections (w/enc.) (email only)  
Stephen B. Samuels, Esq. (w/enc.)



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